IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 292 of 2006

Date of decision : 21.7.2006

Amar Singh **……Appellant.**

Versus

Karam Chand and another **….. Respondents**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellant: Mr. Ajay Dhiman, Advocate.

For respondents : Mr. Manoj Thakur, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents Karam Chand and Kartar Singh, hereinafter called the plaintiffs, filed a suit against the appellant to recover the possession of land, measuring 0-01-17 HM, comprised in Khasra No. 591, situate in Mauza Rehan, Tehsil Nurpur, District Kangra, alleging that they had been forcibly dispossessed on 28.12.1999 by the appellant / defendant. It was alleged by them that they were owners in possession of the suit land

Whether reporters of Local Papers may be allowed to see the Judgment?

but during the recent Settlement, which took place some-time in the year 1984-85, some other persons, namely Mukhtiar Singh, Kashmir Singh, Gurdial Singh, Narinder Singh and Ravinder Singh, had been entered as owners of the land and that they (the plaintiffs) filed a suit against those persons seeking declaration that they were the owners and their suit was decreed and consequently mutation was attested showing them (the plaintiffs) as owners in possession of the suit land. It was alleged that the mutation was entered and attested on 24.12.1999 but on 28,.12.1999 the appellant / defendant dispossessed them forcibly and raised a structure, consisting of one room.

3. Appellant / defendant contested the suit and took the plea that the suit land had been in his possession for the last eighteen years and he had acquired title by prescription. It was claimed that his possession was peaceful, open, hostile and uninterrupted.

4. The trial Court did not accept the plea of adverse possession raised by the appellant and consequently decreed the suit. Appeal was filed by the appellant before the learned District Judge, which stands dismissed.

5. The only point that has been urged by the learned counsel for the appellant / defendant is that the two Courts below have not appreciated the evidence correctly and that the finding, returned by the two Courts, regarding the appellant's plea of adverse possession, is perverse.

6. I have been taken through the judgments of the two Courts below. From the perusal of the judgments of the trial Court and the first appellate Court, it is clear that when Settlement had taken place in the year 1952 and in the final record that was prepared on the conclusion of that Settlement, the respondents were shown to be owners in possession of the suit land. They continued to be recorded as the owners in possession till

the Settlement of 1984-85, when the names of five other persons, i.e. Mukhtiar Singh, Kashmir Singh, Gurdial Singh, Narinder Singh and Ravinder Singh were entered in the columns pertaining to the names of the owners and the persons in possession. The plaintiffs / respondents filed a suit against those five persons and their suit was decreed, vide judgment, copy Ext. P-4. On the strength of that judgment, names of the plaintiffs were entered as owners in possession of the suit land again in the revenue papers. There is absolutely no entry in any revenue paper in favour of the appellant / defendant showing him in possession of the suit land.

7. Defendant / appellant Amar Singh entered the witness box. He admitted that he was aware of the Settlement of 1952 as also of 1984, but could offer no explanation as to why he did not get his own name recorded in the Settlement records, when he claims that he was in possession when the two Settlements took place. Further more, when in the witness box, Amar Singh stated that even his ancestors had been in possession of the suit land and that at the time of the Settlement of 1952 also the possession was not with the plaintiffs but with his ancestors. This statement is contrary to the pleaded version. In the written statement it has been claimed that the defendant had been in possession for the last eighteen years.

8. In view of the above stated position, I do not find that the two Courts below have committed any illegality or even any irregularity in dismissing the plea of adverse possession, set up by the appellant. In any case, no substantial question of law arises. Hence, the appeal is dismissed.

July 21, 2006 (BC) **(Surjit Singh)**
Judge